

KRISTINA L. HILLMAN, Nevada Bar No. 7752
SEAN W. McDONALD, Nevada Bar No. 12817
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
3199 E. Warm Springs Road Suite 400
Las Vegas, Nevada 89120
Telephone (702) 508-9282
Fax (510) 337-1023
E-Mail: khillman@unioncounsel.net
smcdonald@unioncounsel.net
courtnotices@unioncounsel.net

Attorneys for Defendants Laborers' International Union
of North America, Local 872, Thomas White, Marco
Hernandez, and Chesly Torres

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PARNELL COLVIN, RICHARD VELLA,

Plaintiffs,

v.

TOMMY WHITE AKA THOMAS WHITE,
INTERNATIONAL UNION OF NORTH
AMERICA LOCAL 872 LABORERS,

Defendants.

No. 2:21-cv-02109-RFB-NJK

**DECLARATION OF SEAN W.
MCDONALD IN SUPPORT OF
DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION TO VACATE
MOTION TO SEAL**

[ECF No. 35]

I, Sean W. McDonald, declare as follows:

1. I am over the age of 18 and competent to testify. I am an attorney admitted to the bars of the State of Nevada and of this Court. I have personal knowledge of the facts stated herein and I could and would testify to the same if called upon to do so.

2. I am counsel of record for Defendants, Laborers' International Union of North America, Local 872 ("Union" or "Local 872"),¹ its Business Manager / Secretary Treasurer, Thomas White, Marco Hernandez, and Chelsy Torres. I make this declaration in support of the Defendants' Response to Plaintiffs' Motion, captioned "Plaintiffs Motion To Vacate Defendants

¹ Plaintiffs incorrectly named the Union as "International Union of North America Local 872 Laborers."

1 Motion To Seal” (hereinafter “Motion to Vacate”). The Motion to Vacate is on file at ECF No.
2 30.

3 3. Plaintiffs in this case have twice accused undersigned counsel or his office of
4 failing to properly serve Plaintiffs with copies of papers as required by Rule 5 of the Federal
5 Rules of Civil Procedure. The first time was with respect to Defendants’ Motion to Dismiss
6 Amended Complaint. *See* ECF No. 23, at 1 (Plaintiffs’ motion seeking additional time to respond
7 to motion to dismiss, claiming they did not receive a copy of the motion); *see also* ECF No. 25
8 (Defendants’ opposition to motion to extend time). The second time relates to the instant Motion
9 to Vacate. *See* ECF No. 30, at 1 (Plaintiffs claiming they did not receive a copy of the underlying
10 Motion to Seal).

11 4. In my 10 years of practicing law in the State of Nevada and before this District
12 Court, on occasion I have had *pro se* parties falsely claim that they have not received copies of
13 moving papers, often employed as a tactic to excuse untimely or lack of response to motions that
14 were filed with the court. Now that Plaintiffs have twice claimed non-receipt of documents that
15 were properly served upon them by mail under Rule 5 of the Federal Rules of Civil Procedure,
16 this declaration is offered to supplement the facts of service evidenced in the certificates of
17 service attached to the filed papers that Plaintiffs claim to have not received.

18 5. Plaintiffs claim that they did not receive service of copies of Defendants’ Motion
19 to Dismiss Amended Complaint (ECF No. 20) and Defendants’ Motion to Seal or Redact ECF
20 No. 16 (filed at ECF No. 18) (hereinafter “Motion to Seal”). *See* ECF No. 23, at 1 (Plaintiffs’
21 motion seeking additional time to respond to motion to dismiss, claiming they did not receive a
22 copy); and ECF No. 30, at 1 (Plaintiffs’ Motion to Vacate, claiming they did not receive a copy of
23 the Motion to Seal).

24 6. The certificate of service attached to the underlying Motion to Seal recites that I
25 mailed by United States Postal Service, postage prepaid, the document to Plaintiffs Colvin and
26 Vela, who at that time were not registered CM/ECF participants in this case. *See* ECF No. 18, at
27 5. I confirm the truthfulness and accuracy of the facts as recited on the certificate of service. I
28 personally posted the mailings from Las Vegas, Nevada, as recited on the certificate of service.

7. As relevant to the pending Motion to Vacate (ECF No. 30), at the same time copies of the Motion to Seal were deposited in the mail in separate envelopes properly addressed to each Plaintiff and bearing sufficient postage, unbeknownst to Plaintiffs (until now), I prophylactically mailed a third copy of the same document to myself. A true and correct copy of the face of the envelope so posted and later received by me, as indicated by the received date stamp on the envelope, is attached hereto as **Exhibit 1**, page 1. I have redacted the street address on this mailing because it is my personal residence and not my office address. The mailing addressed to me was deposited in a mail collection box on August 16, 2022, contemporaneous with the filing of the Motion to Seal. The same mailing was later personally received by me on August 19, 2022, at which time I stamped it received at my home. The notation accompanying the date stamp, “WRR-LAS (swm)”, refers to the fact the mailing was received at my residential mailing address. Just like the envelopes I mailed to the Plaintiffs, the envelope mailed to myself contained copies of three documents and bears my handwritten notations reflecting those documents. The notations are explained as follows: “RIS MTD” refers to the Reply in Support of the Motion to Dismiss Amended Complaint, ECF No. 17, which was filed on August 16, 2022; “Mot to Seal ECF 16” refers to the Motion to Seal, also filed on August 16, 2022, ECF No. 18; and “Mot to Strike ECF 16” refers to the Motion to Strike ECF No 16, ECF No. 19, which was also filed on August 16, 2022. This envelope, still sealed from before I personally deposited it into the mails in a mail collection box, remains in my possession.

8. With respect to the Notice of Non-Opposition to Motion to Seal or Redact ECF No. 16, which I filed on September 9, 2022, ECF No. 26, the certificate of service attached to that document recites that copies of the document were mailed by United States Postal Service, postage prepaid, separately to Plaintiffs Colvin and Vela, who at that time were not registered CM/ECF participants in this case. *See* ECF No. 26, at 4. The certificate of service is signed by Megan Shea, my legal secretary, who is based in my firm’s Sacramento, California, office. I confirm the truthfulness and accuracy of the facts as stated on the certificate of service from my own personal knowledge and from my review of internal firm records which reflect service was made as recited on the certificate of service. This statement is also based on a contemporaneous

1 conversation I had with Ms. Shea, instructing her as to the special service instructions described
2 below.

3 9. As with my earlier prophylactic mailing of a copy of the Motion to Seal, I
4 instructed my legal secretary, Ms. Shea, to mail an additional copy of the Notice of Non-
5 Opposition filed at ECF No. 26 to me at the same time she served copies on the Plaintiffs by mail
6 as recited in the certificate of service attached to the Notice of Non-Opposition, ECF No. 26, at 4.
7 A true and correct copy of the face of the envelope so posted and later received in my Las Vegas
8 office, and as indicated by the received date stamp on the envelope, is attached hereto as **Exhibit**
9 **1**, page 2. The mailing was posted on September 9, 2022, from my firm's Sacramento office (as
10 reflected by the metered postage printed on the envelope showing the date and the 95814 ZIP
11 Code), contemporaneous with filing of the Notice of Non-Opposition (ECF No. 26). The mailing
12 directed to me was received in my Las Vegas office on September 13, 2022, when personnel in
13 my Las Vegas office stamped it received and opened it. Just like the envelopes mailed to
14 Plaintiffs, the envelope mailed to me contained a copy of the Notice of Non-Opposition to the
15 Motion to Seal or Redact ECF No. 16 (ECF No. 26) and the Notice of Non-Opposition to the
16 Motion to Strike ECF No. 16 (ECF No. 27). The envelope, which was opened by staff in my Las
17 Vegas office, together with its contents, remains in my possession.

18 10. On the basis of the above facts, given that I have personally posted or my staff has
19 personally posted, addressed to me, at the same time, copies of the same documents as were
20 served by mail on the Plaintiffs, I believe that Plaintiffs may be falsely claiming non-receipt of
21 papers as an excuse for not timely responding to motions, consistent with my past experience
22 with some *pro se* parties, consistent with my litigation experiences with some *pro se* parties.

23 I declare under penalty of perjury that the foregoing is true and correct. Executed this 5th
24 day of October, 2022, at Las Vegas, Nevada.

25
26 /s/ Sean W. McDonald
Sean W. McDonald

27
28 152890\1307876

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

[none]

And I hereby certify that I have mailed by the United States Postal Service, postage prepaid, the document to the following non-CM/ECF participants:

Parnell Colvin
6681 Tara Ave
Las Vegas, NV 89120

Richard Vela
867 N Lamb Blvd Space 82
Las Vegas, NV 89110

And I hereby certify that I have emailed the document to the following non-CM/ECF participants per consent to serve by electronic means noted below:

Parnell Colvin – pc681@yahoo.com
(*Per Consent for Electronic Service of Documents, ECF No. 31*)

Dated: October 5, 2022

/s/ Megan Shea
An Employee of Weinberg, Roger & Rosenfeld